of a coach is proved negligence on the part of the owner is implied."

I consequently hold the first defendant liable in negligence.

As far as the question of compensation is concerned, it is already agreed between the parties that should the question of negligence be decided against the defendants, the 2nd and 3rd plaintiffs should be entitled to special damages in the sum of $150 and $35 respectively. The 1st plaintiff was not cross-examined on his earnings and I award him $400 for loss of earnings for a period of two months. I allow him only $15 for loss of clothing. The sum of $15 for transport expenses for himself and his parents is also allowed. The 1st plaintiff is consequently awarded $430 on account of special damages.

As far as general damages are concerned, considering the nature of the injuries I award the following sums:—

1st plaintiff	...	...	$2,000
2nd plaintiff	...	...	$200
3rd plaintiff	...	...	$100

There will consequently be judgment for the plaintiffs in the sum of $2,915 with costs.

Judgment for the plaintiffs.

Solicitors: *Murphy & Dunbar; Koh Kim Leng & Co.*

WONG AH FONG v. CENTRAL LORRY SERVICE CO. LTD. & ORS.

[O.C.J. (Yong J.) December 19, 1969]

[Kuala Lumpur — Civil Suit No. 121 of 1966]

Negligence — Damages — Quantum of damages.

Damages — Personal injuries — Pain and suffering in going through operation — Multiple fractures — Pelvis — Thigh bone — ½" leg shortening.

Damages — Personal injuries — Assessment — General damages — Loss of future earnings.

In this case the plaintiff was severely injured when tractors belonging to the first defendant were negligently set in motion while the plaintiff was attempting to detach a wire rope attached to them. Liability was admitted and the only dispute was as to quantum of damages. The plaintiff was severely injured and when he was admitted into hospital he was found to be in great pain and distress as he had a ruptured bladder and could not discharge his urine. To save his life a laparectomy operation was immediately performed. He underwent treatment for nearly 4 months and thereafter was treated as an outpatient. He had multiple fractures of the pelvis, including fractures of the left socket and neck of the thighbone and the body of the left pubic bone. His left leg was shortened by ½", there was a complete stiffness of his left hip and restriction of his hip-joint movements and these had resulted in the plaintiff not being able to squat, climb stairs or ladders, or work on uneven ground. Osteo-arthritis had set in. These physical disabilities namely the shortening of the left leg and the anchylosis of the left hip would be permanent. At the time of the accident the plaintiff was 22 years old and was employed as an odd job attendant earning a daily pay of $4. After he left the hospitals he was able to get various jobs getting about $75 per month with free food and accomodation.

Held: in assessing damages, the court should give an overall figure. In this case the plaintiff did not suffer any heavy loss of income but had suffered distress and agony in going through the operation. A substantial sum should therefore be awarded for the uncertainties of the future and for pain and suffering, and all in all the sum of $20,000 should be awarded for general damages.

Cases referred to:-

(1) *Ong Ah Pong* v. *Lee Cheng Siong* [1965] 2 M.L.J. viii.

(2) *Othman bin Ahmad* v. *Singapore Traction Co. Ltd.* [1966] 1 M.L.J. 64.

(3) *Saw Tong Seng* v. *Ong Kim Hoon* [1968] 1 M.L.J. 203.

(4) *Cheong Yuen Khiong & Anor.* v. *Lye Joo Seng* [1966] 2 M.L.J. xx.

(5) *Ramasamy* v. *Tham Kam Shea & Anor.* [1966] 1 M.L.J. x.

(6) *Mohd. Shariff* v. *Saminan*, Selangor Civil Suit 532/68 (unreported).

(7) *Watson* v. *Powles* [1967] 3 All E.R. 721, 722.

CIVIL SUIT.

P. G. Lim for the plaintiff.

S. L. Wong for the defendants.

Cur. Adv. Vult.

Yong J.: This is a claim for damages for negligence arising out of the use of two motor tractors (a scraper and a grader) belonging to the first defendant, of which the second and third defendants were the drivers employed by the first defendant in his business of road construction. On April 1, 1963, the plaintiff, a servant of the first defendant, was seriously injured when the tractors were negligently set in motion while the plaintiff was attempting to detach a wire rope attached to them.

After plaintiff had given his evidence, counsel for the defendants admitted liability but disputed the quantum of damages. Under the heading of special damages, the claim for $2,545.40 for loss of earnings while under medical treatment in hospital and for transportation charges was admitted in full, and the claim for $810 for "extra nourishment" and for "Chinese medicine, treatment and consultation" only the sum of $310 was not disputed. Before me there is not an iota of evidence oral or documentary, to support the balance of the claim, which I accordingly disallow. There will therefore be judgment for the plaintiff in the sum of $2,855.40 for special damages.

On the question of general damages the plaintiff alleged and I accept that he was seriously injured by one of the wheels of the grader running over him. On admission into the district hospital in Kuala Lipis he was found to be in great pain and distress as he had a ruptured bladder and could not discharge his urine. To save his life a laparectomy operation was immediately performed. He underwent treatment for nearly 4 months from April 1, 1963 to July 23, 1963 and thereafter he was transferred to the general hospital Kuala Lumpur where he was treated as an outpatient

up to March 10, 1964. According to the report of Dr. A.M. Ismail, plaintiff had multiple fractures of the pelvis, including fractures of the left socket and neck of the thigh bone and the body of the left pubic bone. When he was examined on March 10, 1964, he was able to walk but he complained of pain in his left hip due to post-traumatic arthritis. He was advised to have a further operation, which he refused. When Dr. Balasegaram examined him in the general hospital as late as May 5, 1969, he found plaintiff's left leg was shortened by ¾ inch, there was complete stiffness of his left hip and restriction of his hip-joint movements and that these had resulted in the plaintiff not being able to squat, climb stairs or ladders, or work on uneven ground. Osteo-arthritis had set in. In his opinion plaintiff's ability to do work necessitating the aforesaid movements would further decrease in the passage of time. Dr. Ismail in another report confirmed that these physical disabilities namely the shortening of the left leg and the anchylosis of the left hip would be permanent.

At the time of the accident plaintiff was 22 years of age and was employed by the first defendant as an odd job attendant earning a daily pay of S4. In his statement of claim he alleged that his monthly income averaged about S108. There is no evidence how much of this sum would be spent on his food, presumably a reasonable sum between S25 to S30 per month would be required for a person of his status in life. His net income would therefore be between S78 and S83 per month. After he had left the hospitals, he was employed at various places getting between S70 and S75 per month with free food and accommodation except for 2 months when he tried to learn art-painting and was paid S25 per month. He left a very secured job as an engine operator in a tin mine where he worked for 20 months getting S75 per month with free food and accommodation, for a more glamourous but less pay job as apprentice art-painter. According to him his employer of the tin mine was very sympathetic towards him and had wanted him to stay on, but nevertheless he left him. He changed his job and occupation from time to time at numerous places on the ground of ill health. It appeared to me that he was more of a rolling stone than an honest worker whose illness prevented him to continue to serve under a kind master. Even when he was working under the first defendant before the accident, he had absented himself from work for one out of the eight months he served under him.

Counsel for the defendants ably contended that no damages should be awarded to the plaintiff for loss of future earnings as he has according to the evidence, suffered none. For pain and suffering and loss of amenities he suggested an award of S10,000 and relied on the judgment of Azmi J., as he then was, in *Ong Ah Pong* v. *Lee Cheng Siong*.[1] Counsel for the plaintiff, on the other hand, submitted with great persuasion that the proper award for pain and suffering and loss of amenities should be S20,000 on the authority of the Court of Appeal in *Othman bin Ahmad* v. *Singapore Traction Co. Ltd.*[2] which increased the trial judge's award from S10,000 to S20,000. She also referred me to *Saw Tong Seng* v. *Ong Kim Hoon*[3] and *Cheong Yuen Khiong and another* v. *Lye Joo Seng*,[4] where the trial judge allowed S25,000 and S13,000 respectively, for pain and suffering and loss of amenities including disadvantages arising therefrom. In *Ramasamy* v. *Tham Kam Shea and another*[5] S10,000 was allowed for pain and suffering and loss of amenities and S5,200 for loss of future earnings and in *Mohd. Shariff* v. *Saminan*[6] the sums awarded were S20,000 and S9,264 respectively. None of these cases however bore facts and circumstances identical with those of the present case.

This is one of those cases where any award of damages made by the court would be considered by the defendants to be excessive and by the plaintiffs insufficient. The court has to steer a just course according to the facts and circumstances of each case and to award a fair compensation accordingly. In making this award I shall respectfully follow the ruling laid down by Lord Denning M.R. in *Watson* v. *Powles*[7] where he said:—

> "In the old days when damages were assessed by juries there could be no question of subdivision. A jury gave one award of general damages. In modern times when damages are assessed by judges sitting alone, this court has discouraged judges from going too much into detail. When I was a judge of first instance, this court told me that it was a mistake to subdivide the amount. On the whole I think that this is right. There is one cause of action for personal injuries, not several causes of action for the several items. The award of damages is, therefore, an award of one figure only, a composite figure, made up of several parts. Some of the parts may be capable of being estimated in terms of money, such as loss of future earnings. Others cannot truly be estimated in money at all but must proceed on a conventional basis such as compensation for pain and suffering and loss of amenities. At the end all the parts must be brought together to give fair compensation for the injuries. If a man is awarded a very large sum for loss of future earnings, it may help to compensate him for his future pain and suffering. If he has no loss of earnings, he may be more generously compensated for pain and suffering — and so forth. Just as a jury in the old days would award an overall figure, so may a judge today. The invariable direction to juries in fatal accident cases was
>
> 'that they must not attempt to give damages for the full amount of a perfect compensation for the pecuniary injury but must take a reasonable view of the case and give what they consider, under all circumstances, a fair compensation'."

I would therefore approach the present case in the way indicated by Lord Denning M.R. and make my awards accordingly. In assessing the plaintiff's loss of future earnings, I do not accept defence counsel's contention that plaintiff had suffered none, although I agree that such loss, according to the evidence, may not be heavy. I have assessed this loss and have applied the multiplier making due allowances for the uncertainties of the future and that a capital lump sum in hand is more profitable than driblets of monthly payments or annuities. I have also allowed a substantial sum for plaintiff's pain and suffering, in particular for the distress and agony he went through before the laparectomy operation and for his loss of amenities. All in all I award him the sum of S20,000 for the general damages.

There will be judgment for the plaintiff in the sum of $20,000 for the general damages and $2,855.40 for the special damages and costs.

Judgment for the plaintiff.

Solicitors: *P. G. Lim & Co.; Chooi & Co.*

HASSAN v. ISMAIL

[F.C. (Azmi L.P., Suffian & Ali F.JJ) January 9, 1970]

[Kuala Trengganu — Federal Court Civil Appeal No. X-14 of 1968]

Contract — Specific performance — Sale of land subject to subdivision — Reasonable time to apply for subdivision — Whether contract void ab initio or being contrary to Land Enactment or National Land Code — Contracts (Malay States) Ordinance, 1950, s. 47 — Specific Relief (Malay States) Ordinance, 1950, s. 19.

Land Laws — Subdivision of land — Prohibition under Kelantan Land Enactment and National Land Code — Exemptions.

The appellant had agreed to sell a portion of a piece of land to the respondent, the appellant undertaking to execute the transfer "as soon as the land is subdivided by the Government". It was also agreed that if the appellant refused to transfer the land after it had been subdivided he was to refund the money, three times the amount of the purchase price. The appellant did not apply for subdivision of the land and the respondent applied for specific performance of the contract. The appellant offered to refund three times the amount of the purchase price. The learned trial judge made an order for specific performance holding (a) the engagement to apply for subdivision must be performed within a reasonable time and considering the time lapse the appellant had failed to do so and (b) the agreement to transfer might be specifically expressed despite the appellant's willingness to make the penalty payment provided. On appeal it was argued that the contract was void *ab initio* as the subdivision was forbidden under the Kelantan Land Enactment and the National Land Code.

Held, dismissing the appeal (Ali F.J. dissenting): (1) although the subdivision was forbidden under the Kelantan Land Enactment and the National Land Code there was provision for exemption under the enactments and therefore the contract was not *ab initio;*

(2) in the circumstances the appeal must be dismissed and an order made for the appellant to submit an application for subdivision to the Land Office within two weeks of the judgment of the court.

Case referred to:-

(1) *Savage & Ors.* v. *Uwechia* [1961] 1 All E.R. 830.

The following cases were also cited in argument: *Pelepah Valley (Johore) Rubber Estates Ltd.* v. *Sungai Besi Mines* [1954] M.L.J. 241; *Mohamed Abdullah* v. *Teoh Teng Swee* [1953] M.L.J. 138; *Satyabrata Ghose* v. *Mugneeram Bangur & Co. and Anor.* [1954] S.C.R. 310.

FEDERAL COURT.

Raja Abdul Aziz bin Raja Addruse for the appellant.

C. Jegathesan for the respondent.

Cur. Adv. Vult.

Suffian F.J.: Hassan bin Taib, the defendant in the lower court and appellant before us, had a piece of land, Lot 31, in Mukim Ketereh East, Daerah Pangkal Kalong, in Kelantan. It appears that Ismail bin Ibrahim, the plaintiff in the lower court and respondent before us, was married to the defendant's niece and lived in a house on the defendant's land. On 3rd December, 1962, the defendant sold a portion of the land 60 feet wide and 70 feet long to the plaintiff for $400; it appears that on that portion stood the plaintiff's house. The same day they executed an agreement (Exhibit P1) whereby —

(1) the defendant acknowledged receipt of the purchase price,

(2) the defendant undertook to execute a transfer to the plaintiff "as soon as the land is subdivided by the Government" and

(3) should the defendant refuse to transfer the land to the plaintiff after it had been subdivided by the Government, the defendant undertook to "refund the money three times the amount [of the purchase price] totalling $1,200".

That was all there was concerning subdivision and transfer. The defendant also undertook to allow the plaintiff to erect a building on the land without payment and to occupy the land free of charge. The defendant failed to subdivide the land and transfer the portion to the plaintiff. The plaintiff sued to compel the defendant to do so. He won and the defendant appeals to us.

No evidence was called for either side at the trial, which proceeded on the basis that there were first two preliminary points of law the determination of which would determine the whole suit. These two points of law were:

(1) Did the plaintiff have a cause of action, considering, as the defendant asserted, that he (defendant) was to transfer the portion only after the land had been subdivided and after he had refused to transfer the subdivided part?

(2) Could not the defendant be freed from his obligation to subdivide and transfer, simply by paying the plaintiff $1,200 as provided for in the agreement?

On the first point, the learned judge held that by virtue of section 47 of the Contracts (Malay States) Ordinance, 1950, which reads —

"Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation. — The question 'what is a reasonable time' is, in each particular case, a question of fact.",

"the engagement to apply for subdivision" must be performed within a reasonable time and considering the time lapse the defendant had failed to do so. The learned judge did not say so in so many words, but it is clear that he thought that the plaintiff had a cause of action because (as the pleadings made obvious) the defendant had failed or refused or neglected to have the land subdivided despite repeated demands by the plaintiff.